

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge  
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 ORIGINAL

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MAY 15 2012

S.C. Supreme Court

LEROY ARCHIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to call witnesses to support his defense of self-defense?

## STATEMENT

On September 10-14, 2006, petitioner was convicted of murder and possession of a firearm after a jury trial held before the Honorable Alexander S. Macaulay in Anderson County. A life sentence without parole was imposed. Andrew T. Potter, Esquire was trial counsel.

Petitioner appealed his convictions and the Court of Appeals affirmed them on October 14, 2008. State v. Archie, Op. No. 2008-UP-572.

Petitioner filed an application for post-conviction relief on December 10, 2010, before the Honorable J. Cordell Maddox, Jr. Petitioner was present and was represented by J. Chris Brown, Esquire. Respondent was represented by A. West Lee, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing.

On January 4, 2012, Judge Maddox issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

## ARGUMENT

Defense counsel was ineffective in failing to call witnesses to support his defense of self-defense.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E. 2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held for ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E. 2d 53 (2006).

In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547 626 S.E. 2d 878 (2006).

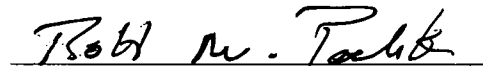
In this case petitioner and Cathy Galloway had lived together almost 15 years. Cathy's son Jack also lived with them. On August 22, 2005, petitioner packed his belongings to move out because he was tired of arguing and fighting. Cathy became upset and told him he could not take certain items which he thought were his. Cathy called her son Jack who started threatening petitioner. Jack had hurt petitioner in the past and petitioner got his gun. Jack started coming behind petitioner as Cathy approached from the front. Petitioner shot in self-defense and told a friend to call the police. (App. p. 234, line 9 – p. 243, line 12).

Petitioner wanted trial counsel to call witnesses to support his self-defense because they had knowledge of prior altercations between the parties. He wanted his supervisor, Mr. Chester Crane to be called. He wanted Julie Rogers and Sherman Guyton to be called as well. Trial counsel did not do this and should be held ineffective as counsel.

CONCLUSION

Petitioner's writ should be granted and he should be given a new trial.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of May, 2012.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO ANDERSON COUNTY  
J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

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LEROY ARCHIE,

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V.

STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

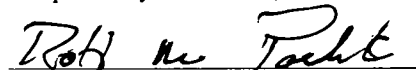
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Counsel for Leroy Archie states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on October 6, 2010. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Leroy Archie.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 15th day of May, 2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge  
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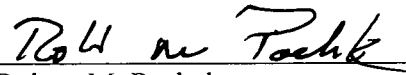
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STATE OF SOUTH CAROLINA,

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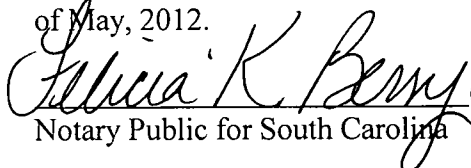
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CERTIFICATE OF SERVICE  
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Kaelon E. May, Esquire and Leroy Archie, #317590, at McCormick Correctional Institution this 15th day of May, 2012.

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day  
of May, 2012.

  
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(L.S.)  
Notary Public for South Carolina

My Commission Expires: June 21, 2020.